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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
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Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
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PETITION FOR RECONSIDERATION

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SUMMARY

LDDS WorldCom seeks reconsideration of the interim payphone compensation plan adopted in the Report and Order in this docket. The Commission's interim compensation decision suffers from two fatal defects.

The first flaw which requires correction is the failure to impose the interim compensation obligation on every IXC and LEC receiving access code or 800 calls from payphones. Both small IXCs and LECs receive calls which are within the compensable categories. To exclude them from payment during the interim period is to violate the statutory mandate that payphone service providers ("PSPs") be compensated for "each and every" call.

Moreover, to the extent the interim plan compensates for each and every call by requiring larger IXCs to pay the compensation which should be imposed on smaller IXCs and on LECs, the decision again is fatally flawed. The basis upon which the Commission allocated compensation and tracking responsibilities is that the IXC is the "primary economic beneficiary" of the calls. It is impossible to conclude, however, that one set of carriers (large IXCs) is the "primary economic beneficiary" of calls carried by another set of carriers (small IXCs and LECs).

The second fatal flaw in the Report and Order is the outlandishly excessive amount of compensation awarded by the interim plan. The use of local coin rates as a surrogate to calculate the compensation amount is entirely inappropriate. Those charges must recover a host of associated costs, such as collecting coins and monitoring coin calls, coin

signalling and per-minute LEC charges for local calls. The actual profit involved in local coin calls thus is substantially less than the full charge.

In the case of the interim compensation plan, on the other hand, the PSP incurs no additional costs of any kind. The entire compensation amount is profit. The proper surrogate for the interim plan, then, would be the amount of profit from a local coin call, not the gross revenue.

These errors in the Report and Order represent significant flaws which render the interim compensation plan arbitrary and capricious, both in the amount of compensation to be paid and in the allocation of the burden among IXCs and LECs. The Report and Order should be reconsidered.

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PETITION FOR RECONSIDERATION

WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS WorldCom"), by its undersigned counsel, respectfully submits the following petition for reconsideration of the Commission's *Report and Order* ("*R&O*") in the above-captioned matter.[1] LDDS WorldCom has serious concerns with many of the policies adopted in the *R&O* by the FCC, and their detrimental impact on carriers and consumers of payphone services, including for example the decision to allow the BOCs to participate in carrier selection. However, because the statutory time constraints of Section 276 of the 1996 Act leave so little time for this reconsideration, LDDS WorldCom confines this petition to issues arising from the aspect of the *R&O* with the most immediate impact -- the Commission's transitional per-phone compensation mechanism.[2]

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, FCC 96-388 (rel. Sept. 20, 1996). In accordance with paragraph 300 of the *R&O*, LDDS WorldCom submits this petition within 30 days from the release of the order.

[2] LDDS WorldCom is aware that the Competitive Telecommunications Association ("CompTel"), of which it is a member, also is filing a petition for reconsideration of the *R&O*. LDDS WorldCom fully supports CompTel's petition, and urges the Commission to grant that petition promptly.

I. INTRODUCTION

Section 276 of the 1996 Act requires the FCC to fundamentally restructure the payphone market in the United States. If done correctly, this restructuring will foster growth in the payphone market, establish regulatory parity for all payphone service providers ("PSPs") and ensure that each use of a payphone contributes to an equitable recovery of the PSPs' costs in providing payphone service.

The central purpose of the transitional plan is to ensure PSPs are "fairly compensated" for calls originating from their payphones. In its comments, LDDS WorldCom stressed that the Commission's original compensation plan to implement the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA")[3] was inadequate in a number of respects.[4] Specifically, the process of direct billing by thousands of PPOs is unduly cumbersome and needlessly expensive. Further, allocation of compensation based upon total toll service revenues distorts true compensation obligations, requiring some carriers to subsidize others on the list. Finally, as LDDS WorldCom noted, there are considerable technical difficulties for carriers to overcome before per-call tracking of PSP-originated calls is feasible.[5] Therefore, LDDS WorldCom urged the Commission not to simply import the existing compensation plan, but to develop a new plan which will minimize transaction costs and provide fair compensation in an efficient manner.

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[3] Codified at 47 U.S.C. § 226.

[4] LDDS WorldCom Comments at 3.

[5] *Id.* at 5-6.

In the *R&O*, the Commission ordered carriers receiving calls from payphones to pay compensation to the PSP. Although the *R&O* ultimately requires carriers to pay compensation on a per-call basis, compensation initially will be a flat, per-phone amount. Modelling its plan after the TOCSIA compensation plan, the Commission ordered only interexchange carriers ("IXCs") with greater than $100 million in annual toll revenues to pay compensation during this initial year. As with the TOCSIA plan, each of these IXCs will pay a share of the flat-rated compensation in proportion to its relative share of gross revenues. Unlike the TOCSIA plan, the transitional plan includes compensation for subscriber 800 traffic.

The Commission computed the amount of compensation by using a surrogate per-call rate multiplied by an average number of calls received by each payphone. Specifically, relying upon deregulated local coin rates from four rural Western states, the Commission concluded that compensation should be equivalent to $0.35 per call during the transitional phase.[6] Relying upon call detail data submitted by APCC and other PSPs, the Commission concluded that a typical payphone receives an average of 131 subscriber 800 and access code calls per month.[7] Applying this data, the Commission ordered that PSPs receive a total amount of $45.85 per phone per month ($0.35/call times 131 calls).

As explained more fully below, the Commission's transitional plan suffers from at least two fatal defects. First, the plan requires compensation payments from only

[6] *R&O* at ¶¶ 56, 72.

[7] *Id.* at ¶ 124-25. According to the data relied upon by the Commission, subscriber 800 traffic constitutes approximately two-thirds of this total.

some carriers receiving compensable calls, thereby ignoring Section 276's explicit mandate and the Commission's own correct conclusion that the primary economic beneficiary of a call should pay compensation to PSPs. Second, the plan establishes a compensation amount which is far in excess of PSP costs for originating subscriber 800 and access code calls. In order to bring its transitional plan into compliance, therefore, the Commission should reduce the amount of compensation owed per phone and apportion that compensation among all carriers receiving compensable calls, rather than limiting compensation to only the largest providers from one discrete industry segment.

II. THE COMMISSION'S INTERIM PER-PHONE PLAN UNLAWFULLY DISCRIMINATES AMONG CARRIERS RECEIVING COMPENSABLE CALLS

Section 276 allows "no exceptions" to its mandate that PSPs receive fair compensation for "each and every" completed call originating from a payphone.[8] Further, the Commission determined that the "primary economic beneficiary" of a call should be responsible for paying compensation for that call.[9] However, by limiting the transitional per-phone compensation obligation only to large interexchange carriers (over $100 million in annual revenues), the Commission violates both of these precepts and ignores its own construction of Section 276.

In the *R&O*, the Commission determined that compensation must be prescribed for the following types of calls: interLATA and intraLATA access code calls, interLATA

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[8] *R&O* at ¶ 87; *see* 47 U.S.C. § 276(b)(1)(A).

[9] *R&O* at ¶ 83.

and intraLATA toll-free calls, and 0+ intraLATA calls.[10] Despite the mandate of Section 276 that compensation for these calls be "fair," the Commission's per-phone plan excuses from the payment obligation two categories of carriers that carry these compensable calls: local exchange carriers ("LECs") and smaller interexchange carriers. Neither exclusion is consistent with Section 276.

It is clear that both LECs and small IXCs receive the types of calls for which compensation is owed. A number of LECs, both BOC and independent, offer intraLATA and interLATA toll services, much of which can be accessed using an 800 access number.[11] Moreover, many LECs offer intraLATA 800 services, which contribute to the volume of subscriber 800 traffic.[12] Similarly, most IXCs, whether large or small, typically offer one or more 800 services and offer a calling card option with their 1+ services. Every operator service provider, regardless of size, is required to have an 800 access number,[13] and many offer other methods of access code dialing as well.

Despite the unassailable fact that LECs and smaller IXCs earn revenues from these calls, the Commission wholly excuses these entities from paying per-phone

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[10] *Id.* at ¶ 52.

[11] For example, NYNEX and other BOCs have announced plans to offer out-of-region interLATA services, including services intended to be accessed through access code dialing. *See, e.g.*, LDDS WorldCom Comments at 7 n.12.

[12] Collectively, LECs carried almost 24 million intraLATA toll calls in 1994. *Statistics of Communications Common Carriers*, 1994/95 Ed., Table 2.6. In many instances, LECs also receive other types of calls which the Commission has identified as requiring compensation. For example, LECs historically have had a monopoly on 0+ intraLATA calls from payphones, and in many instances had no incentive to pay commissions to location owners for such calls.

[13] 47 C.F.R. § 64.705(d).

compensation. The Commission's only explanation for limiting the universe of those paying compensation is the assertion that the "administrative convenience of the parties" will be furthered from modeling compensation upon the existing access code compensation plan.[14] Dubious as this assertion is, it also is entirely irrelevant under the Act. Nothing in Section 276 permits the Commission to exclude carriers from paying their share of compensation for "each and every completed call," regardless of how "convenient" that option might be. Indeed, only a few paragraphs earlier in the *R&O*, the Commission stressed that Section 276 requires the participation of *all* carriers. "[E]xemptions from the obligation to pay compensation," the Commission concluded, "*even on an interim basis*, would be contrary to the congressional mandate that we ensure fair compensation for 'each and every completed intrastate and interstate call.'"[15] This logic squarely applies to the transitional per-phone plan ordered in the *R&O*.

Excluding LECs and smaller IXCs from the per-phone compensation plan also violates the Commission's oft-repeated principle that the primary economic beneficiary of payphone calls should compensate PSPs.[16] It is apparent from the purportedly aggregated data on which the Commission relies that the $45.85 per month compensation amount includes payments for subscriber 800 and access code calls routed to LECs and small IXCs.[17] The data on which the Commission relied was submitted by APCC, Peoples

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[14] *R&O* at ¶ 119.

[15] *R&O* at ¶ 87.

[16] *See R&O* at ¶ 83.

[17] *R&O* at ¶ 124 (citing information reported by Peoples Telephone, Communications Central, Telaleasing, APCC, and the RBOC Coalition).

Telephone, and a few other PSPs, all of which described their data as recording all calls originating from their payphones.[18] If taken at their word, then, this data necessarily must include calls routed to LECs and smaller IXCs since at least some calls from payphones would be carried by these entities.

Because the LECs and smaller IXCs are excluded from the per phone compensation plan, the remaining carriers (such as LDDS WorldCom) are being forced to compensate PSPs for calls which they did not receive, and clearly derive no economic benefit therefrom. It is arbitrary and capricious, therefore, to require LDDS WorldCom to pay far more than its share of the compensation, while giving a free ride to the true economic beneficiaries of the calls.

Fortunately, the Commission's error can be corrected rather easily. The Commission should revise its transitional per-phone compensation plan to include *all* carriers that may receive compensable calls. Thus, LECs, large IXCs, and small IXCs all should be required to participate in the per-phone compensation plan. LDDS WorldCom suggests that the Commission use a carrier's annual toll service revenues to apportion this compensation, but include the revenues of LECs and smaller IXCs in the compensation plan.[19] A chart showing the revised compensation obligations using this standard is attached at Exhibit 1.

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[18] *See, e.g.,* Peoples Comments at 9-10 (reporting the *total* number of calls originated at its payphones); APCC comments at 5-6.

[19] LDDS WorldCom notes that in docket 91-35, compensation for access code calls -- which is an operator service -- was allocated among carriers based upon all toll revenues, whether 1+, private line or operator services. It would be entirely consistent with this earlier approach to base compensation in this proceeding upon a carrier's gross revenues for *all* telecommunications services, rather than simply its toll service revenues.

III. THE COMMISSION MUST RECONSIDER THE AMOUNT OF COMPENSATION PSPs WILL RECEIVE UNDER THE TRANSITIONAL MECHANISM

The transitional compensation amount of $45.85 per phone is derived by multiplying an estimated number of compensable calls per month (131 in this instance) by $0.35 per call. This $0.35 per call amount, in turn, is chosen as a result of the Commission's decision to use a deregulated rate for local coin calls as a surrogate for the costs a PSP incurs in originating access code and subscriber 800 calls. However, as shown below, the Commission's reliance on local coin rates as a surrogate is arbitrary and does not accurately approximate PSP costs for other types of calls from a payphone. Accordingly, the Commission must drastically reduce its transitional compensation amount to reflect an accurate estimate of PSP costs.

The Commission asserts that the rate a PSP charges end users for placing a local call is the best surrogate for the cost the PSP incurs in originating other types of calls from the payphone.[20] Although LDDS WorldCom agrees with the Commission's conclusion that the compensation amount must be consistent with payphone costs,[21] local coin rates are an improper basis for evaluating these costs.

The first reason that local coin rates are an improper basis is that the costs associated with local coin calls are greater than those associated with other types of calls placed from

[20] R&O at ¶ 70 (concluding that local coin rates are "the best available surrogates for payphone costs" because "the cost of originating the various types of payphone calls are similar").

[21] See also id. at ¶ 67 ("PSPs should be compensated for their costs in originating . . . calls" from their payphones).

the payphone. Most significantly, local coin rates must cover the cost of monitoring coin calls and collecting the monies deposited by callers. Thus, coin rates must recover the additional cost of the coin mechanism on a payphone, the cost of collecting the monies deposited in the phones, and the cost of coin signalling capabilities to monitor time and usage on the call. For non-coin calls, by contrast, the IXC obtains billing information from the caller and bears the cost of billing the customer.[22]

A second reason why local coin rates are an improper surrogate is that, like 0+ call commissions, the rate for a local coin call may incorporate "other factors" not related to the cost of the call.[23] The Commission should not fool itself into thinking that PSPs automatically will select the lowest local coin rate needed to recover their costs. Rather, as a profit-maximizing enterprise, one would expect PSPs to bid up the local coin rate, in part so that they may offer greater commissions to profitable location owners. In fact, strategic pricing of local coin rates to maximize the hidden surcharge on access code and subscriber 800 calls appears to be the most likely result. Put simply, any loss in local coin revenues resulting from high local call rates can easily be recouped through higher hidden surcharges.[24] Further, as expressed by the Commission itself, there is a real concern that a

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[22] Moreover, under the Commission's per-call compensation plan, IXCs would have the additional obligation of tracking those calls as well.

[23] Cf. R&O at ¶ 69 (noting that 0+ commissions include compensation for factors other than the use of the payphone).

[24] This problem becomes exacerbated when the compensation rate fluctuates based upon the PSP's individual coin rate. When the default compensation rate is set by the PSP at each phone, LDDS WorldCom's obligation literally could vary with each and every payphone ANI in the country. Moreover, it likely will vary over time from a given phone. This presents an unworkable situation where LDDS WorldCom will be unable to predict the amount of
(continued...)

local coin rate could be set to recover locational monopoly rents associated with the phone. For example, payphones located in rural areas, where the caller has fewer alternative locations to place his or her desired call are more likely to be subject to the market power of a PSP. Basing compensation upon a local coin rate does not create an incentive for PSPs to lower compensation rates to reflect their costs. In fact, the opposite incentive is present.

Finally, the Commission arrives at the $0.35 per call amount based upon an insufficient factual record. The data upon which the Commission relies is derived from only four rural, Western states.[25] The Commission cites no evidence indicating that these states are representative of the Nation generally, nor does it even assert such a conclusion. In addition, as largely rural, sparsely populated areas, these states would appear to be more likely to be subject to the locational monopoly factors about which the Commission expresses concern in the *R&O*.[26]

For these reasons alone, the rate a PSP charges for local coin calls is not a sufficient substitute for PSP costs incurred in originating access code and subscriber 800 calls. In particular, the rate prevailing in those states which have deregulated local coin charges is not a proper basis for selecting an imputed per-call charge for the Commission's transitional compensation plan. Instead, LDDS WorldCom submits that the Commission must base its compensation amount on those costs PSPs incur in originating compensable calls. If the

[24](...continued)
compensation it owes and, furthermore, likely will be unable to verify the amount claimed by a PSP as its local coin rate.

[25] *R&O* at ¶ 56 (using coin rates from Iowa, Nebraska, North Dakota, and Wyoming).

[26] *Id.* at ¶ 59.

Commission continues to use local coin rates as a surrogate, however, it must at least adjust the rate downward to reflect cost savings the PSP experiences and to account for the potential for strategic pricing by PSPs.

CONCLUSION

For the foregoing reasons, LDDS WorldCom requests that the Commission reconsider its transitional compensation plan adopted in the *R&O* in this docket.

Respectfully submitted,

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INTERIM COMPENSATION OBLIGATIONS

COMPANY	1995 TOTAL TOLL SERVICES REVENUES ($ IN MILLIONS)	% OF TOTAL TOLL REVENUES	AMOUNT PER PHONE PER MONTH ($)
AT&T Companies			
AT&T Communications	38,069	44.41%	20.361985
ALASCOM, INC.	325	3.79%	1.7337715
MCI Telecommunications Corp.	12,924	15.08%	6.91418
Sprint Communications	7,277	8.49%	3.892665
LDDS WorldCom	3,640	4.25%	1.948625
Frontier Companies:			
Allnet Comm. Svcs. dba Frontier Comm. Svcs.	827	0.96%	0.44016
Frontier Communications Int'l, Inc.	309	0.36%	0.16506
Frontier Comm. of the North Central Region	133	0.16%	0.07336
Frontier Communications of the West, Inc.	127	0.15%	0.068775
Cable & Wireless Communications, Inc.	700	0.82%	0.37597
LCI International Telecom Corp.	671	0.78%	0.35763
Excel Telecommunications	363	0.42%	0.19257
Telco Communications	215	0.25%	0.114625
MidCom Communications, Inc.	204	0.24%	0.11004
Tel-Sav, Inc. 9/	180	0.21%	0.096285
U.S. Long Distance, Inc.	155	0.18%	0.08253
Vartec Telecom, Inc.	125	0.15%	0.068775
GE Capital Communications	120	0.14%	0.06419
General Communication, Inc.	120	0.14%	0.06419
MFS Intelenet, Inc.	118	0.14%	0.06419
Business Telecom, Inc.	115	0.13%	0.059605
Communication Telesystem Int'l	115	0.13%	0.059605
Oncor Communications, Inc.	111	0.13%	0.059605
The Furst Group, Inc.	109	0.13%	0.059605
American Network Exchange, Inc.	101	0.12%	0.05502
All Other IXCs	*5,168*	*6.03%*	*2.88855*
All LECs	*13,395*	*15.63%*	*7.166355*
Total	**85,716**	**103.42%**	**47.54**